

RECEIPT NUMBER

ORIGINAL 200520781

14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS E. DIAZ,

Plaintiff,

Vs.

JUDGE : Friedman, Bernard A.
DECK : S. Division Civil Deck
DATE : 02/03/2005 @ 13:57:14
CASE NUMBER : 2:05CV70423
REM DIAZ V. INKSTER CITY OF (DA)

CITY OF INKSTER,

Defendant.

MAGISTRATE JUDGE CAPEL

JAMES K. FETT (P39461)
FETT & FIELDS, P.C.
Attorney for Plaintiff
805 E. Main Street
Pinckney, MI 48169
(734) 954-0100EDWARD D. PLATO (P29141)
JOHNSON, ROSATI, LaBARGE,
ASELTINE & FIELD, P.C.
Attorney for Defendant
34405 W. Twelve Mile Rd., Ste. 200
Farmington Hills, MI 48331-5627
(248) 489-4100PETITION FOR REMOVAL

NOW COMES Defendant, CITY OF INKSTER, by and through its attorneys, JOHNSON, ROSATI, LaBARGE, ASELTINE & FIELD, P.C., and hereby petitions this Court pursuant to Title 28, U.S.C.A. §1441, § 1443 and §1446 for removal of the above entitled cause to the United States District Court for the Eastern District of Michigan, Southern Division, for the following reasons:

1. On or about December 21, 2004, Plaintiff, THOMAS E. DIAZ, filed a cause of action against Defendant, CITY OF INKSTER, in the Wayne County Circuit Court and said cause of action was assigned case number 04-438646-CD.

2. Summons was issued against the Defendant on or about December 21, 2004. A photocopy of the Summons served upon the CITY OF INKSTER and the Complaint, are attached hereto. Service was effected upon Defendant, CITY OF INKSTER, on January 11, 2005.

3. That the U.S. District Court, Eastern District of Michigan, Southern Division, has original jurisdiction of this civil action under the provisions of Title 28, United States Code, §1331, and this civil action may be removed to this Court by the Defendant pursuant to the provisions of Title 28, United States Code, §1441, §1443 and §1446 in that the Plaintiff has alleged in his Complaint that the Defendant violated his federal constitutional rights to equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

4. That the time for the filing of this Notice of Removal has not expired and has been made timely pursuant to Title 28, United States Code, §1446.

5. That written notice of the filing of this Removal has been given to all parties as required by law and the Wayne County Circuit Court.

6. That a copy of this Removal has also been filed with the Clerk of the Court for the Circuit Court for the County of Wayne, State of Michigan.


7. That attached hereto and incorporated by reference is a true and accurate copy of all process and pleadings, which have been served upon Defendant, CITY OF INKSTER.

WHEREFORE, Defendant and Petitioner, CITY OF INKSTER, respectfully requests that it may effect removal of the within action from the Circuit Court for the

County of Wayne, State of Michigan, to the United States District Court for the Eastern
District of Michigan, Southern Division.

Respectfully submitted,

JOHNSON, ROSATI, LaBARGE,
ASELTINE & FIELD, P.C.

A handwritten signature in cursive script, reading "Edward D. Plato", is written over a horizontal line.

By: EDWARD D. PLATO (P29141)

Attorney for Defendant

34405 W. Twelve Mile Rd., Ste. 200

Farmington Hills, MI 48331-5627

(248) 489-4100

Dated: February 3, 2005

STATE OF MICHIGAN
THIRD CIRCUIT COURT

CASE NO.



SUMMONS AND
RETURN OF SERVICE

COURT
ADDRESS: 2 WOODWARD AVENUE, DETROIT, MICHIGAN 48226

COURT
TELEPHONE NO. (313) 224- 5243

THIS CASE ASSIGNED TO JUDGE: SUSAN D BORMAN

Bar Number: 11016

PLAINTIFF

DEFENDANT

IAZ THOMAS E

PL 01 VS INKSTER CITY OF

DF 002

PLAINTIFF'S ATTORNEY

JAMES K. FETT
(P-39461)
805 E MAIN ST
PINCKNEY, MI 48169-8147
734-954-0100

CASE FILING FEE PAID		JURY FEE PAID
ISSUED 12/21/04	THIS SUMMONS EXPIRES 03/22/05	DEPUTY COUNTY CLERK PAMELA OLIVER

This summons is invalid unless served on or before its expiration date.

Cathy M. Garrett - Wayne County Clerk

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

- 1. You are being sued.
- 2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
- 3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

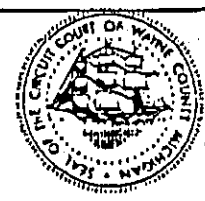
The docket number and assigned judge of the civil/domestic relations action are:

Docket no. 04432483	Judge	Bar no.
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The action ☐ remains ☐ is no longer pending.

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

Date _____ Signature of attorney/plaintiff _____



COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

THOMAS E. DIAZ,

Plaintiff,

v

Case No. 04-
Hon.

-CD

CITY OF INKSTER,

Defendant.

James K. Fett (P39461)
Lawrence A. Fields (P66084)
Fett & Fields, PC
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Attorneys for Plaintiff

COMPLAINT AND JURY DEMAND

A complaint was previously filed by this Plaintiff against this Defendant, based on conduct the same allegations in this complaint. The case was captioned: Thomas E. Diaz v City of Inkster, Case No. 04-432483-CD and was assigned to Honorable Susan D. Borman.


James K. Fett
Attorney for Plaintiffs

PLAINTIFF, through counsel states the following complaint against Defendant.

NATURE OF CLAIM

1. This is a proceeding for declaratory and injunctive relief and for money damages against Defendant to redress the purposeful discrimination in promotions against Plaintiff under the Elliott-Larsen Civil Rights Act.
2. The amount in controversy exceeds \$1,000,000.
3. Plaintiff is a Hispanic and resides in Wayne County.
4. Defendant is a municipal corporation in Wayne County, Michigan.
5. Plaintiff became an auxiliary police officer with Defendant in 1987.
6. In 1989 Defendant hired Plaintiff as a Patrolman.
7. Plaintiff was promoted to Road Patrol Sergeant in September 1999 and Lieutenant in May 2003.
8. City Manager Robert Gordon ("Gordon") started in 2001 that the next Chief of Police would be African-American; Gordon's statement was consistent with his past practice of replacing white administrators with African-Americans.
9. Police Chief Terry Colwell retired on or about May 16, 2003.
10. Deputy Chief Phillip Ludos, a white male, became the Acting Chief.
11. Also on or about May 16, 2003 Gordon named Plaintiff Administrative Lieutenant and second in command.
12. Ludos urged Gordon to appoint Plaintiff to the position of Deputy Chief but Gordon refused, citing budget constraints.
13. Ludos resigned on May 23, 2003, when Gordon refused to permanently appoint him Chief of Police as he had earlier promised.

14. Gordon named Plaintiff Interim Police Chief on June 6, 2003 and informed Plaintiff that he would be considered for the permanent appointment as Chief.

15. The same day, Gordon sent Plaintiff a memo listing candidates for the Chief of Police position; in handwriting next to each candidate's name was the candidate's race; the memo requested Plaintiff to conduct a background investigation with respect to each candidate; the memo is attached as Exhibit A; Gordon later decided to conduct his own background investigation.

16. On June 9, 2003, the local union president, Robert McArthur, endorsed Plaintiff to Mr. Gordon for the position of Chief.

17. On June 13, 2003, Gordon informed Plaintiff that he would not be appointing him the permanent Chief of Police.

18. On June 14, 2003 Gordon announced that Marvin Winkler, Jr., an African-American, would be the new Chief of Police; Plaintiff then reverted to the rank of Executive Lieutenant.

19. Despite the alleged budget constraints, Winkler announced that he would be filling the Deputy Chief position.

20. On June 18, 2003, Plaintiff applied for the position of Deputy Chief by submitting his resume to Chief Winkler.

21. On June 30, 2003, Chief Winkler informed Plaintiff that he had selected Gregory Gaskin, an African-American, as Deputy Chief but that Gaskin would remain as Deputy Chief only for 6 months and then the position would be Plaintiff's; Winkler also informed Plaintiff that he had been named Chief before June 6, 2003, confirming that Gordon's alleged selection process was a sham and that Winkler had been pre-selected because of his race.

22. Defendant transferred Plaintiff from Executive Licutenant to Dayshift Lieutenant on July 3, 2003.

23. On October 23, 2003, Winkler and Gaskin informed Plaintiff that they were in the process of creating a Commander position and, if approved, he would be named Commander.

24. On November 5, 2003, Winkler and Gaskin informed Plaintiff that Gordon would not approve the position if Plaintiff was named Commander; they told Plaintiff that they intended to fill the position with a person from outside the Department for 6 months and then move Plaintiff into the position.

25. On April 26, 2004, Gaskin informed Plaintiff that Aaron Peacock would be named Commander even though he would be leaving the Department in August 2004 to attend law school.

26. In July 2004, Defendant promoted Gregory Hill, an African-American, to the Commander position.

27. Neither Winkler nor Gaskin intended to promote Plaintiff to Deputy Chief or Commander as previously promised; the promises were made to prevent Plaintiff from initiating litigation to vindicate his rights.

28. Defendant did not promote Plaintiff to Chief of Police, Deputy Chief of Police, or Commander despite the fact that Plaintiff:

- a. Has been employed by Defendant for 15 years;
- b. Was Command Officer of the Year in 2002;
- c. Has held a wide variety of positions within the Inkster Police Department, including Patrol Officer, Community Police Officer, Housing Officer, Detective, Road Patrol Sergeant, Administrative Sergeant, Detective Special Lieutenant, Investigations Unit Sergeant, Administrative Lieutenant, Interim Chief and Road Patrol Lieutenant.

- d. Is more qualified than the African-American applicants who were promoted;
- e. Is otherwise eminently qualified for promotion to Commander, Deputy Chief and Chief.

29. Defendant, acting under color of law, have promulgated and continued an informal policy extending preferential treatment based on race in promotions which constitute a denial of Plaintiff's right to equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution; This informal policy has been described in the preceding paragraphs of this Complaint.

30. Plaintiff has been discriminated against on the basis of his race in violation of Elliott-Larsen Civil Rights Act in that:

- a. He is Hispanic;
- b. He applied and is well qualified for promotion to Commander, Deputy Chief and Chief of Police;
- c. Defendant rejected Plaintiff's applications for promotion and instead filled them with African-Americans; these decisions were based on the race of the applicants; and
- d. Defendant's predisposition to promote based on race is evidenced by Gordon's memo listing the name and race of the applicants for Chief of Police as well as Gordon's statement to Lieutenant Smith that the next Chief would be an African-American.

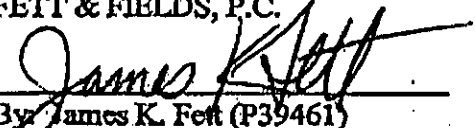
31. Defendant's illegal discrimination has caused Plaintiff damages.

WHEREFORE, Plaintiff requests (1) judgment against Defendant in amount in excess of \$75,000 for his non-economic damages; (2) an award in excess of \$75,000.00 for the value of lost wages and benefits, past and present; (3) an award of costs, interest and attorney fees; (4) promotion

to the position of Commander, Deputy Chief or Chief; and (5) such other equitable relief as the Court deems just, including an injunction enjoining further racial preferences.

Respectfully submitted,

FETT & FIELDS, P.C.


By: James K. Fett (P39461)
Lawrence A. Fields (P66084)
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Attorneys for Plaintiff

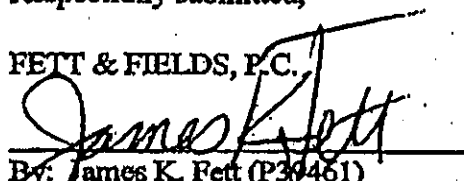
Dated: December 16, 2004

JURY DEMAND

NOW COMES the Plaintiff, through counsel, and hereby demands trial by jury in the above captioned matter.

Respectfully submitted,

FETT & FIELDS, P.C.


By: James K. Fett (P39461)

Lawrence A. Fields (P66084)

805 E. Main St.

Pinckney, MI 48169

734-954-0100

Attorneys for Plaintiff

Dated: December 16, 2004



CITY OF INKSTER
OFFICE OF THE CITY MANAGER
INTER-OFFICE MEMORANDUM

Robert L. Gordon
City Manager

To: Police Chief Phillip Ludos
From: Robert L. Gordon, City Manager *R.L.G.*
Date: June 6, 2003
Subj: Background check for Police Chief.

Please do a background check on the following persons for the position of Police Chief:

Thomas A. Wolfe *White male*

License Number: _____
 Date of Birth: _____
 Social Security Number: _____

William T. Rogers *white male*

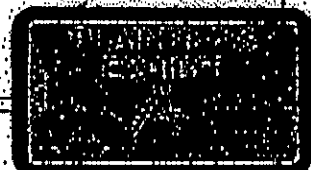
License Number: _____
 Date of Birth: _____
 Social Security Number: _____

Marvin H. Winkler, Jr. *Black Male*

License Number: _____
 Date of Birth: _____
 Social Security Number: _____

Jerry L. Flowers *American Indian Male*

License Number: _____
 Date of Birth: _____
 Social Security Number: _____



CIVIL COVER SHEET

05-70423

8-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
THOMAS E. DIAZ

DEFENDANTS
CITY OF INKSTER BERNARD A. FRIEDMAN

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Wayne
(EXCEPT IN U.S. PLAINTIFF CASES)

MAGISTRATE JUDGE CAPEL,
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Wayne

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(C) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

James K. Fett (P39461)
805 E. Main Street
Pinckney, MI 48169
(734) 954-0100

ATTORNEYS (IF KNOWN)
Edward D. Plato (P29141)
34405 W. Twelve Mile Rd. Ste. 200
Farmington Hills, MI 48331-5627
(248) 489-4100

BAF/Capel
70423

II. BASIS OF JURISDICTION

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR AND ONE BOX FOR DEFENDANT)

		PTF	DEF			PTF	DEF
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)			Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)			Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State
				Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	310 Airplane	302 Personal Injury—Med. Malpractice	610 Agriculture	422 Appeal 28 USC	400 State Reapportionment
120 Marine	315 Airplane Product Liability	305 Personal Injury—Product Liability	620 Other Food & Drug	423 Withdrawal 28 USC 157	410 Antitrust
130 Miller Act	320 Assault, Libel & Slander	308 Asbestos Personal Injury Product	625 Drug Related Seizure of Property 21 USC		430 Banks and Banking
140 Negotiable Instrument	330 Federal Employers' Liability		630 Liquor Laws		450 Commerce/ICC Rates/etc.
150 Recovery of & Enforcement of	340 Marine	PERSONAL PROPERTY	640 R.R. & Truck	PROPERTY	460 Deportation
151 Medicare Act	345 Marine Product Liability	370 Other Fraud	650 Airline Regs.	620 Copyrights	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	350 Motor Vehicle	371 Truth in Lending	660 Occupational Safety/Health	630 Patent	810 Selective Service
153 Recovery of of Veteran's Benefits	355 Motor Vehicle Product Liability	380 Other Personal Property Damage	690 Other	640 Trademark	850 Securities/Commodities/Exchange
160 Stockholders' Suits	360 Other Personal Injury	385 Property Damage Product Liability			875 Customer Challenge 12 USC 3410
190 Other Contract			LABOR	SOCIAL SECURITY	
195 Contract Product			710 Fair Labor Standards Act	801 HIA (1395ff)	891 Agricultural Acts
	REAL PROPERTY	PRISONER PETITIONS	720 Labor/Mgmt.	802 Black Lung	892 Economic Stabilization
210 Land Condemnation	441 Voting	510 Motions to Vacate Sentence	730 Labor/Mgmt. & Disclosure Act	803 DWC/DIWW	893 Environmental Matters
220 Foreclosure	442 Employment	HABEAS CORPUS	740 Railway Labor Act	804 SSID Title XVI	894 Energy Allocation Act
230 Rent Lease &	443 Housing/Accommodations	530 General	790 Other Labor	805 RSI (405(g))	895 Freedom of Information Act
240 Torts to Land	444 Welfare	535 Death Penalty			900 Appeal of Fee Under Equal Access to Justice Act
245 Tort Product Liability	440 Other Civil Rights	540 Mandamus & Other	791 Empl. Ret. Inc. Security Act	FEDERAL TAX	950 Constitutionality of State Statutes
290 All Other Real		550 Civil Rights		870 Taxes (U.S. or Defendant)	890 Other Statutory Actions
		555 Prison Condition		871 IRS Third 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred to another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

(CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Plaintiff claims Defendant denied Plaintiff's right to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 25,000 plus

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE N/A

DOCKET NUMBER N/A

DATE

February 3, 2005

SIGNATURE OF ATTORNEY OF RECORD

Edward D. Plato

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☐ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☐ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
